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U.S. Citizenship
and Immigration
Services

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JAN 26 2005

FILE:

EAC 03 098 52588

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Ecuador who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that she had been battered by or the subject of extreme cruelty perpetrated by her U.S. citizen spouse.

On appeal, counsel for the petitioner asserts that the evidence is sufficient to establish that the petitioner was subjected to extreme cruelty perpetrated by her citizen spouse.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage. The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

Abuse. Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abused victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

Battery or extreme cruelty. For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation . . . shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

On the Form I-360, the petitioner indicated that she entered the United States without inspection in 1990. The record reflects that the petitioner wed United States citizen [REDACTED] on February 18, 1997 in Manhattan, New York. The petitioner filed an initial Form I-360 on September 12, 2001 (EAC0127351175). The director denied the initial Form I-360, finding that the petitioner had failed to establish that she had been battered by, or had been the subject of extreme cruelty perpetrated by, her citizen spouse, [REDACTED] or that she entered into the marriage to the citizen in good faith. The petitioner appealed the director's decision. The Administrative Appeals Office (AAO) dismissed the appeal. On February 5, 2003, the petitioner filed another Form I-360 self-

petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse. [REDACTED] The director denied the petition, finding that the petitioner had failed to establish that she had been battered by, or the subject of extreme cruelty perpetrated by, her citizen spouse. The matter is now on appeal before the AAO. The appeal will be dismissed.

Because the petitioner furnished insufficient evidence to establish that she entered into the marriage in good faith and had been abused by, or the subject of extreme cruelty perpetrated by, her citizen spouse, she was requested on October 3, 2003, to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, and that she married her spouse in good faith.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence. That discussion will not be repeated here.

On appeal, counsel for the petitioner asserts that the director placed "undue weight" on the petitioner's first Form I-360 petition.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen spouse. The evidence consists of the following:

- The petitioner's statement dated September 10, 2001.
- The petitioner's affidavit dated October 15, 2003.
- An assessment written by psychotherapist [REDACTED] CSW, dated July 24, 2001.
- A temporary ex parte order for protection dated December 5, 2002, based on the petitioner's description of events that allegedly occurred on November 29, 2002.
- The petitioner's sister's affidavit dated October 22, 2003, stating that the petitioner told her sister that her husband would humiliate her, call her "very bad words," harassed her and occasionally threatened her.

The temporary ex parte order was granted based upon the petitioner's testimony that her husband had made several harassing phone calls including one on November 29, 2002 in which he yelled obscenities at her and threatened to harm her.

The psychotherapist's assessment relates the following information, provided by the petitioner:

The patient married her husband in 1996 after a six-month courtship. The relationship was stable for two months when Mr. [REDACTED] behavior becomes problematic. He drank excessively, made gestures and threatened to harm her and was verbally abusive. Mr. [REDACTED] was not employed consistently due to his alcoholism and this forced [the petitioner] to take on all financial responsibilities. He would come home after long periods of time with no explanation of his whereabouts. The couple separated in December 1999 and [the petitioner] is unaware of her husband's whereabouts.

It is noted that the petitioner did not seek therapy until two years after she and her husband separated.

In an affidavit dated September 10, 2001, the petitioner stated that her husband cursed and threatened her, stealing money from her purse to support his drinking habit and in December 1999, he took his belongings and left. In an affidavit dated October 15, 2003, the petitioner stated that her husband physically abused her on one occasion in November 1999. She stated that he grabbed her by the arm and threw her to the floor then took her by the throat, threatening to kill her if she ever repeated that he suffered brain damage from drinking. The director noted that the petitioner's testimony was inconsistent because she had failed to mention the November 1999 incident in her prior affidavit or to her psychotherapist. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The evidence is insufficient to establish that the petitioner was battered by, or the subject of extreme cruelty perpetrated by, her citizen spouse.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.